

Chapter 7

Regulatory Enforcement

The Federal Safe Drinking Water Act and the Indiana Administrative Code aim to ensure that the public consumes safe drinking water. These regulations attempt to accomplish this goal by protecting and improving source water quality, setting treated water quality standards, educating the public, and setting requirements for oversight and enforcement. The United States Environmental Protection Agency (USEPA) and the Indiana Department of Environmental Management (IDEM) have legal authority over all public water systems in Indiana to enforce these regulations and penalize violators.



7.1 Indiana Department of Environmental Management

IDEM has primary regulatory enforcement responsibilities over Indiana public water systems. The IDEM Office of Enforcement aims to help ensure that safe drinking water is provided by responding to violations with timely, quality enforcement actions that accomplish three goals:

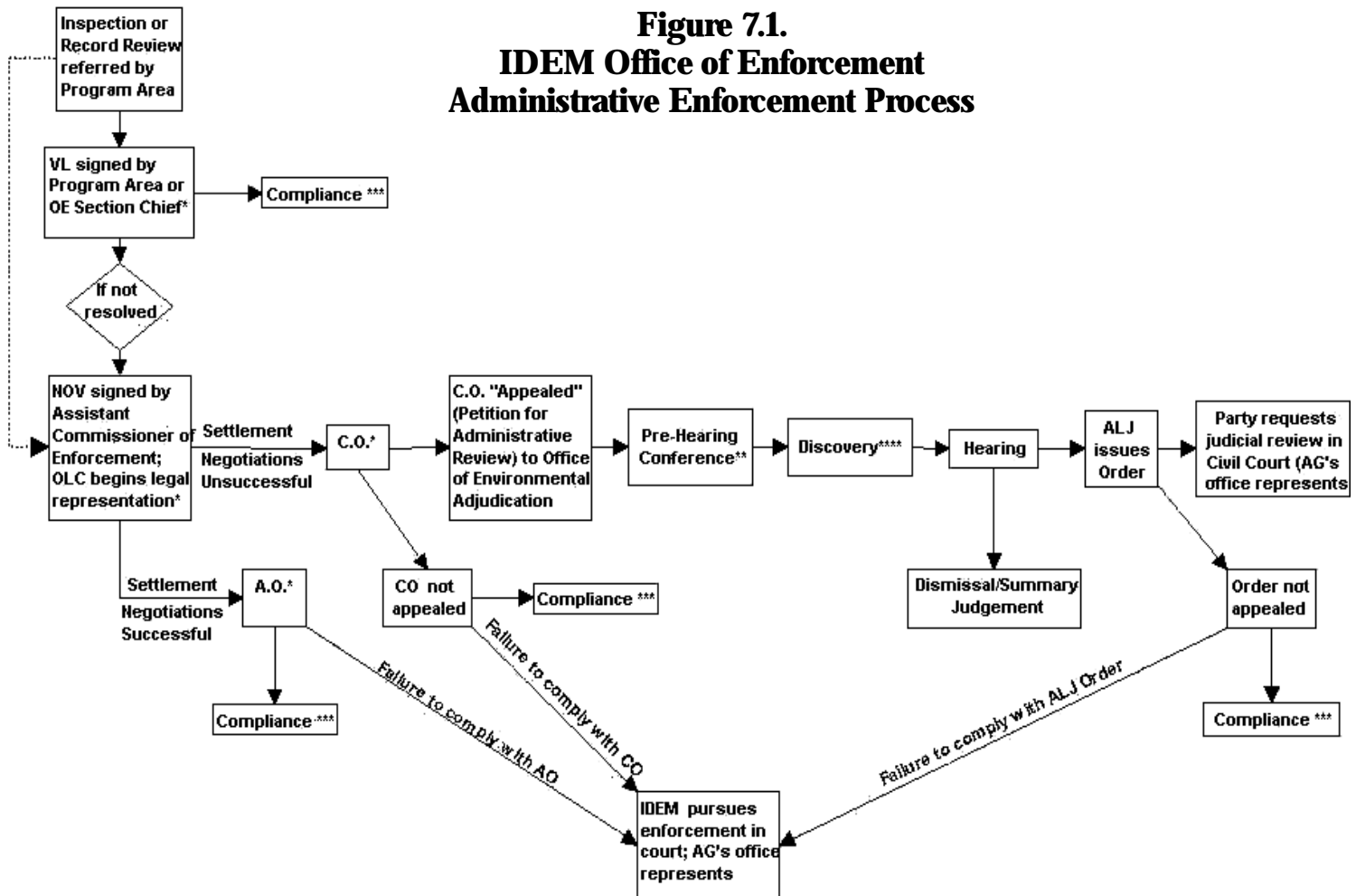
- achieve compliance,
- deter future violations, and
- result in an improved environment.

7.1.1. Enforcement Process

A public water system is considered to be in violation of the law if it does not meet water quality standards, monitoring, or reporting requirements. Once a violation is noted, the IDEM Office of Water Quality evaluates its nature. If the violation is not serious, the Office of Water Quality will typically work with the violator to correct the problem. If the violation is serious in nature or remains uncorrected, it is referred to the Office of Enforcement.

Figure 7.1 illustrates the administrative enforcement process that IDEM's Office of Enforcement (OE) follows when evaluating each violation.

**Figure 7.1.
IDEM Office of Enforcement
Administrative Enforcement Process**



NOTE: The Commissioner of IDEM has the authority to settle cases at any stage during this process.

ABBREVIATION KEY

VL = Violation Letter
 NOV = Notice of Violation
 AO = Agreed Order
 CO = Commissioner's Order
 ALJ = Administrative Law Judge
 AG = Attorney General

* = Sent by Certified Mail

** = Sets schedules and deadlines

Compliance *** = Administrative Enforcement Process Ends

**** = Request for Documents/Discovery

- Interrogatories
- Depositions
- Request for Admissions
- Request for Entry Upon Property
- Witness & Exhibit Lists
- Misc. Challenges to Discovery Request
- Statement of Issues of Fact and Laws
- Dispositive Motions

If initial investigation does not resolve the violation, then the OE issues a Notice of Violation (NOV) to the public water system inviting them to attend a settlement conference to discuss solutions.

After receiving the NOV the violator has a 60-day settlement period to enter into an Agreed Order (AO) with IDEM, which specifies steps the violator must take to comply with the law. Such steps may include fines for past violations or penalties for failure to complete future compliance steps.

According to Federal and Indiana State law, IDEM can fine violators up to \$25,000 per day per violation. The fine amount depends on the:

- magnitude of the violation,
- potential harm to human health and the environment,
- economic benefit gained by the violator by not complying, and
- violator's efforts to achieve compliance.

If the violator can show that extreme circumstances contributed to the problem, then penalties may be reduced. To further offset penalties, violators can perform supplemental environmental projects (SEPs) to improve the environment. SEPs are not necessarily related to the violation.

If the public water system in violation cannot settle on an Agreed Order, then IDEM will issue a Commissioner's Order (CO). A CO requires specific action to correct a violation or pay a fine. If the violator appeals the CO, then the Office of Environmental Adjudication reviews the case prior to a hearing. The hearing can result in either a case dismissal or an order from the Administrative Law Judge (ALJ). If the violator appeals the ALJ order or fails to comply with any order, then the case moves into civil court where the Attorney General's Office represents IDEM.

Two other enforcement tools not included in Figure 7.1 that IDEM has are Emergency Orders and Judicial Orders. If a serious violation occurs, IDEM can issue an Emergency Order, which calls for immediate action to stop activities that threaten human or environmental health. This is a temporary order, expiring 90 days from its issuance. A Judicial Order is issued by a court of record, such as a Superior Court or Circuit Court. This would not include an order issued by an administrative court, such as the Office of Environmental Adjudication.

7.2 United States Environmental Protection Agency

The USEPA relies on State agencies across the country, such as IDEM, to help oversee and enforce compliance with drinking water regulations. If IDEM is unable to enforce regulatory requirements, then the USEPA may intervene to ensure that the violation is quickly remedied. As authorized by Federal law, the USEPA may aid in the enforcement process by:

- providing technical assistance to IDEM;
- entering the drinking water system premises to determine whether the system is complying with applicable requirements;
- issuing orders directly to a public water system to alleviate a violation and to comply with regulations;
- notifying local elected officials who oversee the PWS before any action is taken; and
- taking civil action against the PWS to bring them into compliance (depending on the severity of the violation, USEPA can issue a civil penalty not to exceed \$25,000 per day per violation).

Federal law grants the USEPA additional provisions to aid in the enforcement process. If a violation endangers public health, the USEPA has emergency powers to issue orders to anyone causing or contributing to serious contamination of public water supplies. Orders can require water systems (or other entities) to provide alternative sources of drinking water (e.g., bottled water) until the public health threat is over. Further, USEPA requires that the PWS notify the public of violations including (1) exceedance of maximum contaminant levels, (2) failure to properly monitor and report, (3) variances and exemptions and associated schedule, and (4) the presence of unregulated contaminants.